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OFFICE OF PETITIONS

In re Application	:
Arasappan et al.	:
Application No. 09/909,077	: DECISION ON APPLICATION
Filed: July 19, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. IN01156	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT INCLUDING REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT INDICATED IN NOTICE OF ALLOWANCE (37 C.F.R. §1.705(b)," filed May 6, 2004. Applicant requests that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from two hundred ninety-nine (299) days to three hundred ninety-one (391) days.

For the reasons set forth below, a decision on the request for reconsideration of the patent term adjustment indicated on the patent application is being **HELD IN ABEYANCE** until issuance of the patent.

On April 7, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is two hundred ninety-nine (299) days. On May 6, 2004, applicants timely¹ submitted an application for

¹ PALM records indicate that applicants filed the PTA prior to payment of the issue fee.

patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred ninety-one (391) days.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of two hundred ninety-nine (299) days based on an adjustment for PTO delay of two hundred ninety-nine (299) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1). The PTO delay of 299 days has been reviewed and found to be correct.

However, applicants assert additional PTO delay of ninety-two (92) days for the failure on the part of the Office to issue the patent within three years of its filing. As the patent has not yet issued, this determination cannot yet be made. Accordingly, applicants are given **TWO (2) MONTHS from issuance of the patent** to seek any additional time based on the Office issuing the patent beyond the three-year time frame. A copy of this letter should accompany then patentees written request. No additional fee under § 1.18(e) for reconsideration of PTA on this basis will be required.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **two hundred ninety-nine (299) days**.

Receipt of the \$200.00 fee set forth in 37 C.F.R. §1.18(e) is acknowledged.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (703) 305-0272.

*Karin Ferriter
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